

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Case No: 04-33379-GFK

Darrell Eugene Allen,
Bonnie Jean Allen,

Debtor(s).

**NOTICE OF MOTION AND MOTION TO DISMISS
AND MEMORANDUM OF LAW**

TO: THE ABOVE NAMED DEBTOR(S) AND OTHER PARTIES IN INTEREST:

1. Charles W. Ries is the duly appointed and acting interim trustee in the above captioned bankruptcy estate and moves the Court for the relief requested below and gives notice of hearing herewith.

2. The Court will hold on this motion on the 25th day of October, 2004 at 2:30 o'clock p .m., or as soon thereafter as counsel can be heard, before the Honorable Gregory F. Kishel in Court Room No. 228B, at the United States Courthouse, 316 North Robert Street, St. Paul, Minnesota.

3. Any response to this motion must be filed and delivered not later than October 20, 2004, which is three days prior to the time set for hearing (excluding Saturdays, Sundays and holidays), or filed and served by mail not later than October 14, 2004, which is seven days prior to the time set for hearing (excluding Saturdays, Sundays and holidays). **UNLESS A RESPONSE OPPOSING THIS MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING UNDER LOCAL RULE 9013-2(f).**

4. The Court has jurisdiction over this motion or this motion is authorized under 28 U.S.C. 157 and 1334. This motion is filed under Local Rule 309 and this proceeding arises under 11 U.S.C. 349, 707 and 529.

5. The above named debtor(s) filed for relief under Chapter 7 on June 7, 2004, and the first meeting of creditors was scheduled for July 23, 2004. The debtor(s) failed to appear at said first meeting of creditors, and the first meeting was rescheduled for August 20, 2004. The debtor(s) also failed to appear at that rescheduled first meeting. Based upon representations made by Debtors' counsel, it appears to Trustee that the Debtors will fail to appear at a continued 341 meeting.

6. The discharge has not occurred.

7. The debtors are required under 11 U.S.C. 521 to cooperate with the trustee as necessary to enable the trustee to perform the trustee's duties under this title. In failing to appear,

the debtors have failed to provide the trustee with sworn testimony regarding the debtors' financial condition.

8. The trustee is hereby requesting that the case be dismissed under 11 U.S.C. 707(1) for unreasonable delay by the debtors, which is prejudicial to creditors.

9. The trustee hereby moves the Court for an Order dismissing the bankruptcy case as it relates to Darrell Eugene Allen and Bonnie Jean Allen and denying or vacating the discharge of said Debtors.

10. That this motion shall constitute the requisite memorandum of law and supporting affidavit.

/e/Charles W. Ries_____
Charles W. Ries
P. O. Box 7
Mankato, MN 56002-0007
Telephone (507) 625-6600
Attorney License No: 12767X

Verification: I, Charles W. Ries, the moving party named in the foregoing Notice of Motion and Motion to Dismiss and Memorandum of Law, declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information and belief.

Dated this 20th day of September, 2004.

/e/Charles W. Ries_____
Charles W. Ries

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Case No: 04-33379-GFK

Darrell Eugene Allen,
Bonnie Jean Allen,

Debtor(s).

DECLARATION RE: SERVICE BY MAIL

The undersigned, being an employee of Maschka, Riedy & Ries, 200 Union Square Business Center, 201 North Broad Street, Mankato, Minnesota, declares under penalty of perjury that on the 20th day of September, 2004, she served the Notice of Motion and Motion to Dismiss and Notice of Hearing on Motion to Dismiss by first class mail postage prepaid to each entity named below at the address stated below for each entity:

Darrell Eugene Allen
206 6th Street Apt 103
Stewartville, MN 55976

Bonnie Jean Allen
206 6th Street Apt 103
Stewartville, MN 55976

Jerome W. Perry
Attorney at Law
300 3rd Ave SE, Rm 307
Rochester, MN 55904

United States Trustee
1015 U S Courthouse
300 S 4th St
Minneapolis MN 55415

/e/Janet Anderson_____

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Case No: 04-33379-GFK

Darrell Eugene Allen
Bonnie Jean Allen,

Debtor(s).

ORDER

This matter came before the Court on the ____ day of October, 2004 upon the motion of Charles W. Ries, Chapter 7 Trustee, for an order dismissing this case. Charles W. Ries appeared on behalf of the trustee. Other appearances are noted of record. Upon the moving documents, record made at the hearing, and all of the other files, records and proceedings in this case,

IT IS HEREBY ORDERED:

1. That this Chapter 7 case is dismissed as it relates to Darrell Eugene Allen and Bonnie Jean Allen, effective the date of this order.

2. That the Clerk of this Court shall transmit a copy of this order, and such other form notice of dismissal as may be required under the rules of this Court, to debtors and all of their creditors and other parties in interest to this case.

ALL CREDITORS ARE HEREBY NOTIFIED THAT DEBTORS HAVE NOT BEEN DISCHARGED FROM THEIR DEBTS IN BANKRUPTCY BY THIS COURT. CREDITORS HAVING QUESTIONS ABOUT THE ENFORCEABILITY OF THEIR CLAIMS AGAINST DEBTORS SHOULD CONSULT COUNSEL OF THEIR CHOICE, AND SHOULD NOT CONTACT THE CLERK OF THIS COURT.

Dated this ____ day of _____, 2004.

Honorable Gregory F. Kishel
Judge of Bankruptcy Court